

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2007 APR 24 AM 10:49

CLERK OF COURT

§ §

4-07CV-247-Y

CIVIL ACTION NO.:

(Jury Trial)

**MASTEC of TEXAS, INC., and
MASTEC SERVICES COMPANY, INC.**

Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Randy and Kari Burchard, and file their Original Complaint against Defendants MASTEC of Texas, Inc., and MASTEC Services Company, Inc. In support thereof and as good and sufficient grounds therefor, Plaintiffs respectfully show this Honorable Court as follows:

I.
PARTIES

1. Plaintiffs, Randi and Kari Burchard, are citizens of the State of Texas and residents of Parker County, Texas.

2. The Defendant, MASTEC of Texas, Inc., is a nonresident corporation that is a citizen and resident of Florida, has its principal place of business in Coral Gables, Florida, and is incorporated under the laws of the State of Florida. Defendant engages in business in the State of Texas and regularly and systematically conducts business throughout the Northern District of Texas. This Defendant also has specific contacts with the Northern District in this matter as the injury in question occurred in Wichita Falls, Texas, where Defendant's agent(s), representative(s), and/or

employee(s) failed to de-energize the area where Mr. Burchard was working, causing him to be electrocuted. This Defendant may be served with process through its registered agent, Corporation Service Co., 701 Brazos Street, Suite 1050, Austin, Texas 78701.

3. The Defendant, MASTEC Services Company, Inc., is a nonresident corporation that is a citizen and resident of Florida, has its principal place of business in Coral Gables, Florida, and is incorporated under the laws of the State of Florida. Defendant engages in business in the State of Texas and regularly and systematically conducts business throughout the Northern District of Texas. This Defendant also has specific contacts with the Northern District in this matter as the injury in question occurred in Wichita Falls, Texas, where Defendant's agent(s), representative(s), and/or employee(s) failed to de-energize the area where Mr. Burchard was working, causing him to be electrocuted. This Defendant may be served with process through its registered agent, Corporation Service Co., 701 Brazos Street, Suite 1050, Austin, Texas 78701.

II.

JURISDICTION & VENUE

4. This Court has original jurisdiction of this lawsuit under 28 U.S.C. §1332(a)(1). Plaintiffs are citizens of Texas and are residents of Springtown, Parker County, Texas. The Defendants are citizens and residents of the State of Florida, where they also have their principal place of business in Coral Gables, Florida. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Jurisdiction is proper pursuant to 28 U.S.C. §1332 based upon complete diversity of citizenship between the parties.

5. Venue is proper in the Northern District of Texas because the events forming the basis of this Complaint occurred in Wichita Falls, Texas. The nonresident corporate Defendants continuously and systematically do business within the Northern District of Texas, are subject to

personal jurisdiction in the Northern District of Texas, and are properly haled to court in the Northern District of Texas within the meaning of 28 U.S.C. §1391. This Court also has pendent jurisdiction over those claims that arise under Texas law.

III.
FACTUAL BACKGROUND

6. On September 22, 2005, at Midwestern State University in Wichita Falls, Texas, Randy Burchard was electrocuted and injured as a result of the negligence of Defendants, who failed to ensure the area where Mr. Burchard was working was de-energized.

IV.
NEGLIGENCE OF DEFENDANTS

7. Plaintiffs re-allege and incorporate herein sections I. through III. of the Complaint. Plaintiffs would show that Defendants and their employee(s), agent(s), and/or representative(s) failed to exercise that degree of care, prudence and caution that should have been exercised by a person or company of ordinary prudence similarly situated and were therefore negligent. Further, Defendants are liable under the theory of *respondeat superior* for the acts and omissions of its employee(s).

8. Plaintiffs would show that each and all of the above and foregoing, whether acts of omission or commission, were negligent and were a proximate cause of the personal injuries sustained by Plaintiffs as will hereinafter be alleged with particularity.

V.
DAMAGES

9. Plaintiffs re-allege and incorporate herein sections I. through IV. of the Complaint. Plaintiffs allege that as a direct and proximate result of the acts and/or omissions of Defendants, which brought about injuries and damages to Plaintiffs, they are entitled to be compensated for past and future loss of consortium, past and future lost wages, loss of future earning capacity, reasonable

and necessary past and future medical expenses, past and future disfigurement, past and future physical and emotional pain, past and future mental anguish, torment, and suffering, all of which Plaintiffs allege they should be compensated for in a fair and reasonable amount which greatly exceeds the minimum jurisdictional limits of this Court.

VI.
REQUEST FOR JURY TRIAL

10. Plaintiffs respectfully request a trial by jury.

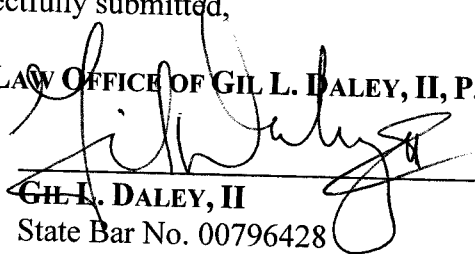
VII.
PRAYER

11. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that they have judgment against the Defendants for actual damages; for additional damages as provided by statute; for attorney's fees; for pre-judgment and post-judgment interest at the highest level permitted by law; for all costs of court; and for such other and further relief to which Plaintiffs may show themselves justly entitled, at law and/or in equity.

Respectfully submitted,

THE LAW OFFICE OF GIL L. DALEY, II, P.C.

By:


GIL L. DALEY, II

State Bar No. 00796428

1401 Elm Street, Suite 4585

Dallas, Texas 75202

214-698-5988

214-752-0404 FAX

209 West 2nd Street #107

Fort Worth, Texas 76102

817-763-9553

817-763-5891 FAX

ATTORNEY FOR PLAINTIFFS

CIVIL COVER SHEET

This 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. PLAINTIFFS

Randy and Kari Burchard

DEFENDANTS

MASTEC of Texas, Inc.
MASTEC Services Company, Inc.(b) County of Residence of First Parker County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Dade, Florida
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gil L. Daley, II
The Law Office of Gil L. Daley, II, P.C.
1401 Elm Street, Suite 4585
Dallas, Texas 75202
214/698-5988

Attorneys (If Known)

4-07CV-247-Y

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is a personal injury lawsuit based upon complete diversity of citizenship between the parties pursuant to 28 U.S.C. §1332. Venue is proper in this district as the events giving rise to this action occurred in this district, and the foreign corporate defendants continuously and systematically do business in this district, are subject to personal jurisdiction in this district, and are properly haled into court district. Further, this Court has pendent jurisdiction over those claims asserted herein that arise under the laws of the State of Texas.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/24/07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

FW3070

350

Y0

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/96)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Filing Notice - Fort Worth Division

CIVIL ACTION NO:

4-07CV-247-Y

This case has been assigned to District Judge: _____

(Complete if applicable)

TRANSFERRED FROM: _____

DATE FILED: _____

Civil cases are assigned to a judge by random draw. A docket clerk for each judge maintains the recording of documents filed with the Clerk. A complete list of phone numbers for both the judges' chambers and the docket clerks is provided.

<u>Judge</u>	<u>Court Settings</u>	<u>Pleadings Filed</u>
(A) Judge John H. McBRYDE	(817)850-6650	(817)850-6611
Even Cases: 850-6652 Odd Cases: 850-6653		
(Y) Judge Terry R. MEANS	(817)850-6673	(817)850-6612
(BE) Magistrate Judge Charles BLEIL	(817)850-6690	(817)850-6697

For access to local rules, attorney admission information, frequently asked questions, common forms, filing instructions, and records information, please visit our web site at www.txnd.uscourts.gov. To speak to someone in the district clerk's office, please call (817) 850-6601.

To receive electronic access to court docket sheets and filed documents, contact the PACER Service Center at www.pacer.pcs.uscourts.gov or by phone at 1-800-676-6856 for a log-in and password.

Information is attached regarding trials by a United States magistrate judge, receiving electronic notice, and the court's privacy policy.